IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2379 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANCHHIBEN DAHYABHAI BALUBHAI KHALASI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2379 of 2004

MS SHAHEEN QURESH for MR MM TIRMIZI for Petitioner

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenue has challenged her detention order dated 08-02-2004. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about six criminal cases pending against the petitioner. All these cases are registered under the Bombay Prohibition Act. It is alleged that the petitioner is illegally dealing in country liquor. In the grounds of detention, the detaining authority has also relied upon the statement of some witnesses and the authority has claimed privilege under Section 9 (2) of the Act and, therefore, the names of those witnesses have not been disclosed. The aforesaid order of detention is challenged by the petitioner on various grounds.

2) Ms.Shaheen Qureshi, learned advocate for the petitioner has raised various points challenging the order of detention. She has submitted that before claiming privilege under Section 9 (2) of the Act, the authority has not tried to verify about the credentials and character of the detenue. She has further submitted that the privilege is claimed in a routine manner and, therefore, without any basis the authority has tried to withhold the names of witnesses and as a result of that the petitioner is denied the valuable right of making effective representation. In support of her say, Ms.Qureshi has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236.

3) Ms.Qureshi, learned advocate for the petitioner has further submitted that the petitioner has made a representation through her son on 16th February 2004, which was rejected by the State Government on 4th March, 2004, therefore, there is a delay in deciding representation of the petitioner. She has also placed on record copy of intimation received by the petitioner from the Home Department dated 4th March, 2004. It is submitted that delay in deciding representation is not explained by the respondents, even though the point regarding delay in deciding representation is taken in the petition in para 4 (J), therefore, this petition is required to be allowed.

3) To substantiate her say, the learned advocate for the petitioner has relied upon a decision of this Court in NARAYAN TUKARAM BADDI v. State of Gujarat & Ors. reported in 1996 (1) GLR 31, wherein on the ground of unexplained delay in considering the representation, this Court has set aside the detention order. In the aforesaid case, the Court was concerned with a case

wherein the petitioner was detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The detenue therein made a representation, which was disposed of after a considerable delay and delay was not satisfactorily explained. This Court held that the authorities may act with utmost promptness in disposing of the representation. While quashing the detention order passed against the detenue, this Court held that right is guaranteed to every detenue of making representation at the earliest opportunity against the order of detention and as a necessary corollary by using words "as soon as may be" in Article 22 (5) of the Constitution of India, the anxiety on the part of the framers of the Constitution of India to inform the detenue of the grounds of detention is reflected. This Court further observed that once the earliest opportunity is provided to make a representation against the order of detention, correspondingly, there is a constitutional obligation for the speedy and expeditious consideration of such representation by the authority. This Court further held that utmost promptitude, expedition and diligence is expected from the authority to consider such representation. Even though no time limit is prescribed for the purpose of deciding representation, any indifference, avoidable delay or remissness on the part of the authority in considering the representation would vitiate the continued detention of the detenue.

4) Unfortunately, no affidavit-in-reply is filed by the respondent-authority and the delay in deciding representation of the petitioner has remained unexplained. Therefore, the averment made in the petition regarding delay in deciding representation has remained uncontroverted. In that view of the matter, since the representation of the petitioner is not dealt with forthwith, this petition is required to be allowed, as further detention of the petitioner would be violative of Article 22 (5) of the Constitution of India, as the same is held to be illegal.

5) At this stage, learned advocate for the petitioner made a voluntary statement that the petitioner will not enter Surat city upto 31st October, 2004, unless she is required to attend Court proceedings. This statement is recorded and the police authority is directed to monitor whether the petitioner is entering Surat city or not.

6) In view of above discussion, this petition is allowed. The continuous detention of the detenue is held

to be illegal and the detenue, Manchhiben Dahyabhai Balubhai Khalasi is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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